

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

ORIGINAL

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647

DOCKET FILE COPY ORIGINAL

NEW YORK OFFICE
919 THIRD AVENUE
NEW YORK, NY 10022

July 23, 1999

VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II, 445 12th Street, S.W., Ste. TW-A325
Washington, D.C. 20554

Re: CC Docket No. 96-45; Federal-State Joint Board in Universal Service, Further
Notice of Proposed Rulemaking, FCC 99-120 (rel. May 28, 1999)

Dear Ms. Salas:

Commonwealth Telephone Company, by its undersigned counsel, and pursuant to §§ 1.415 and 1.419 of the Commission's rules, is pleased to submit an original and four (4) copies of its comments in the above-referenced proceeding.

Please date-stamp the extra copy of this filing and return it to us. Any questions or concerns regarding the enclosed comments should be addressed to the undersigned.

Respectfully submitted,



Russell M. Blau
Harry N. Malone

Counsel for Commonwealth Telephone Co.

Enclosure

cc: Sheryl Todd, Accounting Policy Division (3 copies)
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JUL 28 1999

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Forward-Looking Mechanism)	CC Docket No. 97-160
for High Cost Support for)	
Non-Rural LECs)	

COMMENTS OF COMMONWEALTH TELEPHONE COMPANY

Pursuant to section 1.415 of the Commission's rules, Commonwealth Telephone Company is pleased to provide its comments in response to the Commission's *Further Notice of Proposed Rulemaking* ("FNPRM") in the above referenced dockets.¹

Commonwealth Telephone Company ("Commonwealth"), founded in 1897, is a full-service telecommunications provider serving 20 counties in eastern Pennsylvania. Commonwealth has 280,000 access lines and is the 10th largest independent telephone company in the United States. Over the years, it has invested heavily in enhancing its network, and has implemented a 100% digital switching system and extensive fiber optic network. Commonwealth is a "rural telephone company" pursuant to 47 U.S.C. § 153(37)(D) inasmuch as fewer than 15% (in fact, none) of its access lines were in communities of greater than 50,000 on February 8, 1996. For calendar year 1998, Commonwealth received Long Term Support payments, but no High Cost Loop or Local Switching support.

¹ *Federal-State Joint Board in Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-120 (rel. May 28, 1999).

I. THE COMMISSION SHOULD RETAIN THE STATUTORY DEFINITION OF A “RURAL TELEPHONE COMPANY” WHEN DISTINGUISHING BETWEEN RURAL AND NON-RURAL CARRIERS FOR PURPOSES OF CALCULATING USF SUPPORT.

In paragraph 254 of the FNPRM, the Commission sought comment on whether it should reconsider its decision to use the rural telephone company definition in the Communications Act² to distinguish between rural and non-rural carriers for purposes of calculating universal service fund (“USF”) support. Commonwealth recommends that the Commission retain its current practice of using the statutory definition.

The Commission has previously touted the benefits of consistency in relying on the statutory definition of a rural telephone company when distinguishing between rural and non-rural carriers. In the Personal Communications Services D, E, and F block auction proceeding, the Commission stated that distinguishing carriers on the basis of the 1996 Act definition “would promote uniformity of regulations and is therefore consistent with the mandate of that legislation to ease regulatory burdens and eliminate unnecessary regulation.”³

This preference for consistency in distinguishing rural carriers has permeated the Commission’s rulemaking in the three years since passage of the 1996 Act. The most significant example, of course, is the Commission’s decision to adopt the Joint Board’s recommendation to use the statutory definition of rural telephone company in distinguishing between methods of

² 47 U.S.C. § 3(37).

³ *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding*, CC Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, para. 66 (rel. June 24, 1996).

calculating USF support.⁴ The Joint Board, after notice and considerable comment,⁵ had determined that the statutory definition of a rural telephone company was appropriate to describe those carriers who “serve fewer subscribers relative to the large incumbent LECs, serve more sparsely populated areas, and do not generally benefit from the economies of scales and scope as much as non-rural carriers.”⁶ Other examples of the Commission’s consistent adherence to this definition include:

- exemption of statutory rural telephone companies from the separate affiliate requirement for provision of CMRS;⁷
- inclusion of statutory rural telephone companies in the General Wireless rules;⁸ and
- specifying that one member of the NECA High Cost and Low Income Committee must be from a statutory rural telephone company.⁹

Against this backdrop, rural and non-rural carriers alike have relied on this definition, as it applies to USF support calculations, in making numerous business decisions over the last three years. Any change in the application of this definition could inure to the detriment of carriers

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 310 (rel. May 8, 1997) (using statutory definition) (“*USF Order*”).

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, para. 242 (rel. Nov. 8, 1996) (“*Recommended Decision*”).

⁶ *Id.* paras. 272, 283.

⁷ *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services*, WT Docket No. 96-162, Report And Order, 12 FCC Rcd 15668, para. 71 (rel. Oct. 3, 1997).

⁸ *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, Fourth Report And Order, FCC 98-213 (rel. Sep. 24, 1998) (amending 47 C.F.R. § 26.4).

⁹ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Eighth Order On Reconsideration, FCC 98-306 n.106 (rel. Nov. 20, 1998).

who, relying on this definition, may have refrained from previously commenting in the Commission's cost mechanism proceeding,¹⁰ may have bought or sold exchanges, or otherwise may have executed business plans predicated on their status as a rural telephone company for purposes of USF support.

Commonwealth submits that the statutory definition of a "rural telephone company" has served the public interest quite well concerning the administration of the universal service program. Three years ago, the Commission agreed with the Joint Board that the special characteristics of statutorily defined rural telephone companies were such that they should be accorded different treatment when calculating universal service support. Since that time, the characteristics of rural telephone companies have not changed, and there is no reason for the Commission to revise its initial decision.

II. THE COMMISSION SHOULD DEFINE A LOCAL EXCHANGE CARRIER OPERATING ENTITY AT THE STUDY AREA LEVEL.

In paragraph 251 of the FNPRM, the Commission sought comment on how it should interpret the phrase "local exchange operating entity." For the sake of consistency and predictability, the term "local exchange carrier operating entity" should refer to an entity operating at the study area level, not the holding company level. Observations at the study area level correspond better to the characteristics which support a rural exemption – number of

¹⁰ *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514 (rel. Jul. 18, 1997).

subscribers, service area density, and economies of scale. Moreover, this interpretation is consistent with Congress's use of the study area boundary in paragraph (C) of section 3(37).¹¹

III. IN DEFINING A "COMMUNITY," THE COMMISSION SHOULD NOT CONFUSE THE DEFINITION OF A RURAL AREA WITH THAT OF A RURAL TELEPHONE COMPANY, BUT INSTEAD SHOULD BASE THE DEFINITION ON CENSUS BUREAU STATISTICS, WHEN POSSIBLE.

In paragraph 253 of the FNPRM, the Commission sought comment on whether it should define communities of more than 50,000 by using Census Bureau statistics. Commonwealth suggests that it should.

It is inappropriate to use the definition of a "rural area" (found in section 54.5 of the Commission's rules)¹² in determining rural telephone company status because this definition in no way comports with the criteria in section 3(37), which are based on either Census Bureau statistics, study areas, or "communities." In fact, the two definitions serve very different purposes. The section 54.5 definition of a "rural area" was developed by the Commission in conjunction with its rural healthcare rules, not its high cost fund rules.¹³ These two definitions differ markedly in that one defines a specific type of operating entity, while the other defines a general type of service area. Whereas the definition of a rural telephone company is designed to recognize the special *economic* characteristics of *specific* rural carriers and support regulations that accommodate those characteristics, the definition of a rural area is designed to recognize the special *demographic* characteristics of certain areas and support regulations that

¹¹ "The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity . . . provides telephone exchange service in any local exchange *study area* with fewer than 50,000 access lines." 47 U.S.C. § 3(37)(C) (emphasis supplied).

¹² 47 C.F.R. § 54.5.

¹³ *USF Order* para. 647.

generally accommodate healthcare providers therein, regardless of the characteristics of specific healthcare providers. Commonwealth believes, therefore, that the Commission should not confuse the two definitions.

While most of the section 3(37) definition of a rural telephone company involves measurable criteria, Commonwealth sympathizes with the Commission's inquiry into what a subsection (D) "community" exactly is. Such a definition is found neither in the statute itself nor any congressional reports accompanying the original bill. We also know of no decisions that relate to the definition of "community" as it applies to Section 3(37) specifically. In the absence of direct authority, then, the Commission should base its definition of "community" on guidance provided by the statute in question and helpful Commission precedent.

First, Census Bureau statistics are mentioned in other sub-paragraphs of section 3(37),¹⁴ strongly implying that they were a clearly acceptable data source to Congress when it crafted the definition of a rural telephone company. Second, the Commission has relied on Census Bureau statistics in the past, and may wish to continue this reliance in the interest of simplicity, consistency, and predictability.

The Commission bureau that has had the most compelling need to define a "community" is the Mass Media Bureau, which has devoted considerable resources to that issue. While we must be careful in being guided by analysis that is driven by much different policy considerations, Commonwealth feels that, by reviewing the Mass Media Bureau's rules and decisions, some further insight may be gained into what the Commission's approach should be in regard to defining rural telephone companies.

¹⁴ See 47 U.S.C. § 3(37)(A)(i), (ii).

The Mass Media Bureau assumes that a city, town, or other political subdivision is a "community."¹⁵ While suburbs of a city may also be part of its "community" if they do not exhibit distinct characteristics of their own,¹⁶ it is also true that separate communities can exist within a political subdivision; for example, the Commission has held that many separate communities may exist within a single county.¹⁷

If a locality is incorporated, the Mass Media Bureau will presume that it is a community.¹⁸ Discrete unincorporated localities may also be communities, but there must be some indicators that the place is truly a community,¹⁹ such as the existence of a post office, bank, community center, fire department, or telephone exchange,²⁰ or a school district and newspaper.²¹ In general, there must be a place "around which [the residents'] interests coalesce."²²

¹⁵ See 47 C.F.R. § 73.1120 (equating the terms); 47 C.F.R. § 76.51 (listing cities and towns in table of broadcast "communities").

¹⁶ See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, MM Docket No. 84-231, Memorandum Opinion and Order, 5 FCC Rcd 934 para. 5 (rel. Feb. 20, 1990) ("*Docket 80-90 Order*").

¹⁷ See *Calvert Telecomms. Corp.*, CAC Docket No. 2521, Memorandum Opinion and Order, 49 FCC 2d 200, para. 22 (rel. Oct. 24, 1974).

¹⁸ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, MM Docket No. 96-239, Notice of Proposed Rulemaking, 11 FCC Rcd 20468, para. 3 (rel. Nov. 29, 1996).

¹⁹ *Docket 80-90 Order*, 67 RR2d 610, para. 4.

²⁰ See *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations*, MM Docket No. 86-388, Memorandum Opinion and Order, 5 FCC Rcd 2663, para 9. (rel. Apr. 23, 1990)

²¹ See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, MM Docket No. 88-491, Second Report and Order, 6 FCC Rcd 5786, para. 3 (rel. Oct. 9, 1991).

²² See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, MM Docket No. 90-452, Report and Order, 6 FCC Rcd 4278, para. 3 (rel. July 10, 1991).

Regarding the Common Carrier Bureau, one of its first attempts to define a rural community for exemption purposes was in the proceeding to eliminate the cable television cross ownership rules for rural telephone companies.²³ In the *Cross-Ownership Order*, the FCC chose to define rural communities in terms of Census Bureau "places."²⁴ "Places" are concentrations of populations that are specifically identified by the Census Bureau in its decennial census.²⁵ A place is usually an incorporated city, town, village, or borough, but there are also numerous unincorporated "places" as well, known as "census designated places" (CDPs).²⁶

While their approaches may differ somewhat, the Common Carrier Bureau and Mass Media Bureau seem to be consistent in defining a community as either an incorporated place, a census designated place, or one that is clearly, if not officially, designated as a population center based on quantifiable indicia. Commonwealth is comfortable with this definition, and suggests that the Commission should rely on it.

²³ *Elimination of the Telephone Company -- Cable Television Cross-Ownership Rules*, CC Docket 80-767, Report and Order, FCC 81-520 (rel. Nov. 27, 1981)(*"Cross-Ownership Order"*); 47 C.F.R. § 63.58.

²⁴ *Cross-Ownership Order* para. 36.

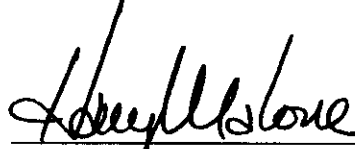
²⁵ *Ardmore Tel. Co., Inc.*, BC Docket No. 82-536, Memorandum Opinion and Order, 56 RR 2d 611, 613 n.8 (rel. July 12, 1984).

²⁶ U.S. Census Bureau, *Glossary* (visited July 21, 1997)<<http://www.census.gov/geol/www/tiger/glossary.html>>.

CONCLUSION

In the interests of consistency, predictability, and uniformity of regulation, the Commission should interpret its rules as suggested in the foregoing comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell M. Blau", written over a horizontal line.

Russell M. Blau
Harry N. Malone
Swidler Berlin Shereff Friedman, LLP
3000 K Street N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500
Counsel for Commonwealth Telephone Co.

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